



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:

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Mr. Seth A. Neidhardt
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In re: KKSR(FM), Sartell, MN
Facility ID No. 59149
Regent Licensee of St. Cloud, Inc.
File No. BRH-20041130BDY

Application for Renewal of License

Informal Objection

Dear Messrs. Neidhardt and Boyle:

We have before us: (1) the referenced application (the "Application") of Regent Licensee of St. Cloud, Inc. (the "Licensee") for renewal of its license for radio Station KKSR(FM), Sartell, Minnesota (the "Station"); (2) a "Petition to Deny" filed by Seth A. Neidhardt ("Neidhardt") with the Commission on March 2, 2005 (the "Objection");¹ and (3) Licensee's "Motion to Strike and Opposition to Petition to Deny," filed on April 1, 2005 (the "Opposition"). Neidhardt, a Station employee,² alleges that Licensee failed to conduct the Station's "Cash Dash" contest substantially as announced or advertised, as required by the Commission's Rules (the "Rules").³ Neidhardt further alleges that Licensee misrepresented the nature of a Station job opening and the manner in which it was

¹ Petitions to deny an application for renewal of the license of an existing broadcast station must be filed no later than the first day of the last full calendar month of the expiring license term. 47 C.F.R. § 73.3516(e). For radio stations licensed in communities in Minnesota, because their licenses expired on April 1, 2005, the applicable petition filing deadline was March 1, 2005. 47 C.F.R. § 73.1020(a)(10). The pleading filed by Neidhardt thus fails to meet the requirements of a petition to deny. We will, however, treat it as an informal objection, pursuant to Section 73.3587 of the Rules. *See* 47 C.F.R. § 73.3587.

² Licensee asserts that the Objection must be dismissed for lack of standing because Neidhardt has not demonstrated that he is a "party in interest" as a Station employee. Opposition at 5. Because we dismiss the Objection on other grounds, we will not address this argument further.

³ *See* 47 C.F.R. § 73.1216.

filled in the Equal Employment Opportunity (“EEO”) public file report filed with the Application. For the reasons set forth below, we deny the Objection and grant the Application.

Discussion. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”), both petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act, which governs our evaluation of an application for license renewal.⁴ Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁵ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁶

Violation of Contest Rules. Neidhardt claims that Licensee failed to conduct its 2004 “Cash Dash” contest substantially as announced or advertised. During the contest, Station DJs broadcast clues about a cash prize that the Station employees had hidden in a public area. The relevant portion of the Station’s official rules reads as follows:

The prize may be anywhere in a public place within the KISS 96-7 listening area. You may have to bend, contort, crouch, reach or any combination. The KISS 96-7 on-air personalities do not know where the prize is hidden ... Absolutely no trespassing on private property! (Emphasis added.)

Neidhardt asserts that the conduct of the contest deviated from these rules because one of the prizes was found on the private property of Klaphake Fertilizer, Inc. (“Klaphake”).⁷ He argues that “thousands of listeners were not given the fair chance to find the prize because [they assumed the area] to be private property and, therefore, refrained from looking for the prize there.”⁸ Neidhardt further argues that the listeners who did search the property were trespassing, and many were asked to leave by the County sheriff.⁹ Neidhardt also asserts that placing the prize on the property endangered the safety of the contest participants because the “[i]nhalation of ammonia could cause harm to people.”¹⁰ Finally,

⁴ See 47 U.S.C. § 309(e). See also *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁵ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁷ Objection at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Neidhardt contends that, contrary to what was stated in the contest rules, at least two on-air personalities knew where the prize was hidden.¹¹

In response, Licensee argues that the contest was, in fact, conducted substantially as announced. First, Licensee contends that the rules state that the prize would be hidden “anywhere in a public place,” which, Licensee asserts, is not synonymous with “public property.”¹² Licensee maintains that “public places” may be on private property, such as “shopping malls, restaurants, [and] amusement parks,” and that Klaphake’s falls into this category.¹³ Specifically, Licensee notes that Klaphake’s is a business, that there is no gate or other barrier that blocks the property, and that Klaphake’s owner essentially confirmed that the premises was open to the public when she permitted many contest participants to remain.¹⁴

Licensee next argues that Neidhardt has provided no evidence demonstrating that the contest was either dangerous or disruptive, noting that Klaphake’s owner permitted participants to be on her property and that no one was harmed or endangered during their participation in the contest.¹⁵ Licensee further argues that Neidhardt’s allegations are inapposite because the Commission eliminated its rule against “disruptive contests” more than two decades ago.¹⁶ Licensee also rejects Neidhardt’s argument that the Station deviated from the contest rules because two announcers knew where the prize was hidden, asserting that “the plain purpose of that rule [was] to keep listeners from calling the studio to solicit clues, and to prevent on-air talent from accidentally (or deliberately) giving anyone an unfair advantage.”¹⁷ Finally, Licensee argues that, even if the Station had deviated from the contest rules, as Neidhardt claims, any such deviations would not be considered “substantial” and, in any event, would not warrant revocation of its license.¹⁸

Section 73.1216 of the Rules provides, “A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.”¹⁹ We find that Neidhardt has failed to make a *prima facie* case that Licensee violated Section 73.1216 by failing to conduct its “Cash Dash” contest substantially as announced or advertised. The prize was hidden in a public place, as was stated in the contest rules. Moreover, even if the location of the prize on the property of a business could be seen as a technical deviation of the Rules, we do not consider the deviation to be “substantial.” Generally speaking, the Commission has only found a deviation to be “substantial” where such deviation materially diminished the value of the prize received, or where the prize was awarded to a person or persons other

¹¹ *Id.* at 1.

¹² Opposition at 10.

¹³ *Id.*

¹⁴ *Id.* at 11.

¹⁵ *Id.* at 8.

¹⁶ *Id.*

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 16.

¹⁹ 47 C.F.R. § 73.1216.

than those who would have won had the rules been followed.²⁰ Here, Neidhardt has failed to present any evidence that anyone was prejudiced by the location of the prize; to the contrary, a large number of people who figured out the location based on the clues broadcast on the Station went to Klaphake's to find the prize.²¹ Likewise, Neidhardt provides no evidence that the announcers' knowledge of the prize's location had any influence on the contest's outcome.

In addition, Neidhardt's allegations that the contest was disruptive or endangered the safety of its participants are outside of the Commission's jurisdiction. As noted by Licensee, the Commission abolished its "disruptive contest" rule in 1985, finding that contests resulting in "public disorder can all be handled at the local level through both civil means (e.g., actions for trespass, personal injury, private nuisance, invasion of privacy, or injunctive relief) and criminal means (e.g., disturbing the peace or public nuisance)."²² Accordingly, because Licensee has not violated the Act or the Rules based on the record before us, we conclude that that Neidhardt's allegations regarding Licensee's 2004 "Cash Dash" contest has failed to raise a substantial and material question of fact that grant of the Application would be *prima facie* inconsistent with the Act.

EEO/Misrepresentation Claim. Neidhardt next claims that the Station was "misleading – perhaps even fraudulent" in a description in the public file report (the "Report") submitted with the Application regarding a position that was filled in the fall of 2004. Specifically, Neidhardt alleges that the position – listed in the Report as "On Air Talent – KLZZ/KKSR" -- was never posted as a dual-station position and was never advertised at the St. Cloud Tech College Job Fair, as stated in the Report.²³

In response, Licensee claims that the Station "did not violate the EEO Rules."²⁴ It explains that a "vacancy arose at station KLZZ, Licensee recruited for that position, and eventually filled it with an individual who was already a part-time employee at station KKSR, thus effectively combining the two positions."²⁵ Licensee maintains that its characterization of the position as a dual-station opening is accurate because that was the job that was, in fact, filled. Licensee further asserts that there is nothing "untoward" about its representation that it recruited for the position at the St. Cloud Tech College Job Fair, explaining that it reviewed résumés and tapes that it had collected at that job fair, which took place a few months before the position came open.²⁶

²⁰ See, e.g., *Randall T. Odeneal, Mississippi Valley Broadcasting Inc.*, Letter, 7 FCC Rcd 4474 (MMB 1994) (violation found for failure to award \$200,000 cash prize as announced); *Quaker State Broadcasting Corp.*, Letter, 7 FCC Rcd 6241 (MMB 1992) (violation found where licensee promised a television worth \$2,000 but awarded a set worth only \$1,100). See also *New Northwest Broadcasters, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 9352 (EB 2004) (violation found where the station stated that it would award prizes to a certain numbered caller but then awarded the prizes before that number of calls had been reached). But see *Zapis Communications Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 3888 (MB 1992) (finding technical violation where Licensee cancelled contest for safety reasons, but finding that the violation occurred under circumstances that did not raise substantial and material questions of fact with respect to the station's renewal application).

²¹ Opposition at 13.

²² *Elimination of Unnecessary Broadcast Regulation*, Policy Statement and Order, 57 RR 2d 939, ¶ 5 (1985).

²³ Objection at 2.

²⁴ Opposition at 7.

²⁵ *Id.*

²⁶ *Id.* at 8.

While Neidhardt does not allege a specific EEO Rule violation (and Licensee fails to cite to a specific Rule in its Opposition), the pertinent Rule is Section 73.2080(c)(6).²⁷ That Rule requires a broadcast station to place an annual report in its public file which includes, among other things: (1) a list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title; and (2) the recruiting sources used to fill each such vacancy.²⁸

Based on the record before us, we find that Licensee has complied with Section 73.2080(c)(6)'s reporting requirements by listing its full-time vacancies during the relevant time period and the recruiting sources used to fill those vacancies. Specifically, we do not find Licensee's description of the KLZZ/KKSR job opening in the Report to be misleading because it reflects the position that was ultimately filled. Moreover, there is nothing in the record to contradict Licensee's assertion that it reviewed materials it gathered from the St. Cloud Tech College Job Fair when considering applicants for the position. Accordingly, Neidhardt has failed to present any evidence that would lead us to conclude that Licensee has violated Section 73.2080(c)(6) of the Rules.

Conclusion/Actions. For the foregoing reasons, we deny the Objection. We have evaluated the KKSR(FM) renewal application pursuant to Section 309(k) of the Act,²⁹ and we find that Station KKSR(FM) has served the public interest, convenience, and necessity during the subject license term. Moreover, we find that there have been no serious violations of the Act or the Rules involving Station KKSR(FM), or violations by Regent Licensee of St. Cloud, Inc. of the Act or the Rules which, taken together, would constitute a pattern of abuse. In light of the foregoing, we will grant the Application.

Accordingly, IT IS ORDERED that the Informal Objection filed by Seth Neidhardt is DENIED.

IT IS FURTHER ORDERED that the application of Regent Licensee of St. Cloud, Inc. for renewal of its license for Station KKSR(FM) (File No. BRH-20041130BDY) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Regent Licensee of St. Cloud, Inc.

²⁷ See 47 C.F.R. § 73.2080(c)(6).

²⁸ *Id.*

²⁹ 47 U.S.C. § 309(k).